



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Consultation Requirements under the Endangered Species Act for State and Tribal Clean Water Act Section 404 Program Approvals

FROM: David P. Ross
Assistant Administrator

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Date: 2020.08.27
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TO: Mary S. Walker
Region 4 Administrator

The Endangered Species Act (ESA) Section 7 directs each federal agency to ensure, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, that “any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of” listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. 1536(a)(2). The U.S. Environmental Protection Agency (EPA or Agency) views consultation under ESA Section 7 as required when EPA determines that approval of a state or tribe’s request to assume administration of the Clean Water Act (CWA) Section 404 program may affect a listed species or designated critical habitat. EPA’s position is set forth in the attached memorandum entitled “Endangered Species Act Section 7(a)(2) Consultation for State and Tribal Clean Water Act Section 404 Program Approvals.” EPA has finalized its position following the consideration of comments received in response to the Agency’s *Federal Register* notice “Request for Comment on Whether EPA’s Approval of a Clean Water Act Section 404 Program Is Nondiscretionary for Purposes of Endangered Species Act Section 7 Consultation” (Docket ID No. EPA-HQ-OW-2020-0008). The attached memorandum will be posted on EPA’s website at <https://www.epa.gov/cwa404g>.

Because we have determined that EPA’s potential approval of the State of Florida’s August 20, 2020 request to assume administration of the CWA Section 404 program may affect ESA-listed species or designated critical habitat, please initiate ESA Section 7 formal consultation with our federal partners as part of your review of Florida’s application. I look forward to continuing to work with you and your staff on this important action.

Attachment (1):

1. Memorandum on Endangered Species Act Section 7(a)(2) Consultation for State and Tribal Clean Water Act Section 404 Program Approvals